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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

18-cr-30 (PAC)

6 MEDIN KOSIC, et al.,

7 Defendants.
-----x8 New York, N.Y.
9 January 23, 2018
10 11:15 a.m.

12 Before:

13 HON. PAUL A. CROTTY

14 APPEARANCES

15 GEOFFREY S. BERMAN
16 Interim United States Attorney for the
17 BY: CATHERINE C. GEDDES, ESQ.
18 STEPHANIE L. LAKE, ESQ.
19 Assistant United States Attorneys20 FEDERAL DEFENDERS OF NEW YORK INC.
21 Attorneys for Defendant Kosic
22 BY: SABRINA P. SHROFF, ESQ.23 ZEMAN & WOMBLE
24 Attorneys for Defendant Manen
25 BY: KENNETH WOMBLE, ESQ.26 GOLDBERGER & DUBIN, P.C.
27 Attorneys for Defendants Mirsad Bogdanovic
28 and Jasmin Cejovic
29 BY: LAWRENCE A. DUBIN, ESQ.

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1 APPEARANCES (Cont'd)

2 STAMPUR & ROTH
3 Attorneys for Defendant Sullivan
BY: WILLIAM STAMPUR, ESQ.4 THE LAW FIRM OF CESAR DE CASTRO, P.C.
5 Attorneys for Defendant Banasku
BY: CESAR DE CASTRO, ESQ.6 LAW OFFICE OF NATALI J.H. TODD P.C.
7 Attorneys for Defendant Francese
BY: NATALI J.H. TODD, ESQ.8 THOMAS AMBROSIO, ESQ.
9 Attorney for Defendant Bucci10 ABRAHAM HASSEN, ESQ.
11 Attorney for Defendant Charlton12 LAW OFFICE OF LAW OFFICE OF MEREDITH S. HELLER PLLC
Attorneys for Defendant Jennifer Bogdanovic
BY: MEREDITH S. HELLER, ESQ.13 Also Present: Lea Harmon
14 U.S. Pretrial Services Officer

16 (In open court)

17 THE CLERK: Your Honor, this is in the matter of
18 Docket No. 18-cr-30, United States of America v. Medin Kosic,
19 et al.20 Counsel for the government, please state your
21 appearance.22 MS. GEDDES: Good morning, your Honor. Catherine
23 Geddes for the United States. And I'm joined by my colleague,
24 Stephanie Lake.

25 MS. LAKE: Good morning.

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1 THE COURT: Ms. Geddes, Ms. Lake.

2 MS. SHROFF: Good morning, your Honor. On behalf of
3 Mr. Kosic, who is seated in the jury box, second row, furthest
4 to the right, Federal Defenders of New York, by Sabrina Shroff.

5 THE COURT: OK. Mr. Kosic, could you raise your hand.
6 Are you Mr. Kosic?

7 DEFENDANT KOSIC: Yes, sir.

8 MR. DUBIN: Good morning, Judge. Lawrence Dubin for
9 Mr. Bogdanovic, who is the second seated defendant closest to
10 the window, and also covering for Mr. Kenneth Paul on
11 Mr. Cejovic.

12 THE COURT: Mr. Cejovic is?

13 MR. DUBIN: He's on bail, Judge.

14 THE COURT: OK. Thank you, Mr. Dubin.

15 MR. DUBIN: You're welcome.

16 THE COURT: Thank you.

17 MR. DE CASTRO: Good morning. For Mr. Banasku, Cesar
18 De Castro. Mr. Banasku is raising his hand in the jury box,
19 your Honor.

20 THE COURT: Good morning.

21 MR. WOMBLE: Good morning, your Honor. Ken Womble for
22 Paul Van Manen, middle second row in the back raising his hand.

23 THE COURT: Good morning. Thank you, Mr. Womble.

24 MR. WOMBLE: Your Honor, William J. Stampur, standing
25 in for my partner James Roth. I'm representing Shaun Sullivan,

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1 who is in the first row, just raised his hand, your Honor.

2 THE COURT: Good morning, Mr. Sullivan. Thank you,
3 Mr. Stampur.

4 MR. AMBROSIO: Good morning, your Honor. Thomas
5 Ambrosio on behalf of Alexander Bucci, who is in the first row.

6 THE COURT: Mr. Bucci. Thank you, Mr. Ambrosio.

7 MR. HASSAN: Abraham Hassan standing in for my
8 partner, Grainne O'Neill. I'm representing Mr. Charlton.

9 THE COURT: Good morning. Thank you, Mr. Hassan.

10 MS. TODD: Good morning, your Honor. Natali Todd for
11 Anthony Francese, who is out on bail. And he is not here as of
12 this moment. I have received four phone calls, the first one
13 at 8:30 this morning, that he was taking the bus. And then
14 there was some major problem with the bus, so then he decided
15 to take the ferry. The last phone call I received was at 10:46
16 this morning, that the ferry was about ten minutes from
17 arriving at the court. So I'm assuming he should be here
18 shortly, and I apologize, Judge, but I will get more
19 information when he arrives. But I am assured he is on his
20 way.

21 THE COURT: OK. Thank you, Ms. Todd.

22 THE CLERK: Meredith Heller?

23 THE COURT: Is Jennifer Bogdanovic here?

24 Yes. Do you know where your lawyer is,
25 Ms. Bogdanovic?

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1 Mr. Hassan?

2 MR. HASSAN: Your Honor, I got a text from my partner,
3 from Ms. Heller, if I could stand in for Her.4 THE COURT: You're going to appear for Ms. Bogdanovic?
5 OK. With all defendants, then, with the exception of
6 Mr. Francese, who is in transit, I guess we'll proceed to
7 arraignment on the charges.8 I will ask each of the defendants whether they have
9 received a copy of the indictment?10 MS. SHROFF: Your Honor, Mr. Kosic has in fact seen a
11 copy of the indictment. He has reviewed it. And he waives its
12 public reading and would enter a plea of not guilty.

13 THE COURT: OK. Not guilty for Mr. Kosic.

14 MR. DUBIN: Your Honor, with regard to Mirsad
15 Bogdanovic, he has received a copy of the indictment. I went
16 over it carefully with him. He's read it. He waives the
17 public reading of it. And I would ask your Honor to enter a
18 plea of not guilty.19 THE COURT: OK. So a plea for Mr. Bogdanovic, Mirsad
20 Bogdanovic, will be entered, not guilty.21 MR. DE CASTRO: For Mr. Banasku, he has received a
22 copy of the indictment. We've reviewed it. We ask that you
23 enter a plea of not guilty. And we waive its public reading.24 THE COURT: OK. A plea of not guilty will be entered
25 for Mr. Banasku.

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1 MR. WOMBLE: For Mr. Van Manen, he has received a copy
2 of the indictment. We have reviewed it. We waive its public
3 reading and enter a plea of not guilty.

4 THE COURT: A plea of not guilty will be entered for
5 Mr. Van Manen.

6 MR. STAMPUR: Judge, with respect to Shaun Sullivan, I
7 reviewed the indictment with him this morning. We waive its
8 public reading. And he is prepared to enter a not guilty plea.

9 THE COURT: All right. A plea of not guilty for
10 Mr. Sullivan.

11 MR. AMBROSIO: Your Honor, on behalf of Mr. Alexander
12 Bucci, he has reviewed the indictment with me. We'll waive a
13 further reading and enter a plea of not guilty.

14 THE COURT: A plea of not guilty is entered for
15 Mr. Bucci.

16 MR. HASSAN: Mr. Charlton, we reviewed the indictment.
17 He is ready to enter a plea of not guilty. And we waive the
18 reading.

19 THE COURT: Mr. Charlton, OK.

20 And do you want to do the same thing for
21 Mr. Bogdanovic?

22 MS. HELLER: Actually, I will, your Honor. I
23 apologize for my lateness. Meredith Heller on behalf of
24 Jennifer Bogdanovic. We have reviewed --

25 THE COURT: You're here for the important part.

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1 MS. HELLER: We're here for the important part,
2 exactly.

3 We have reviewed the indictment, waive the public
4 reading, and she enters a plea of not guilty.

5 THE COURT: Thank you, Ms. Heller. A plea of not
6 guilty will be entered for Ms. Bogdanovic.

7 Does that take care of everybody -- with the exception
8 of you, Ms. Todd.

9 MS. TODD: Yes, your Honor.

10 THE COURT: We'll just -- maybe Mr. Francese will
11 appear.

12 MS. TODD: Yes.

13 THE COURT: Mr. Dubin, do you want to enter a plea for
14 Mr. Cejovic?

15 MR. DUBIN: Yes. Forgive me. But yes, sir. I was
16 there when his lawyer went over the indictment with him, before
17 the magistrate's hearing was held. He understands the charges
18 pending against him. He waives the public reading. And I
19 would ask that your Honor enter a plea of not guilty for him.

20 THE COURT: A plea of not guilty will be entered for
21 Mr. Cejovic.

22 Does that take care of everybody we have?

23 MS. SHROFF: Yes, your Honor.

24 THE COURT: All right. Government, do you have --
25 what kind of discovery do you want to produce?

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1 MS. GEDDES: Yes, your Honor. Today we have begun
2 handing out and have envelopes for the remaining defendants.
3 The majority of the discovery, which includes line sheets,
4 recordings, and affidavits for the wires that were up in this
5 case. We have also produced or are producing today documents
6 related to their arrests. There is a bit of remaining
7 discovery but not much, primarily lab reports and a few more
8 search warrant affidavits. The bulk is being produced to
9 everyone today, and the remainder will be produced within one
10 week.

11 THE COURT: The remainder will be produced when?

12 MS. GEDDES: Within one week, your Honor.

13 THE COURT: All right. And how much was it,
14 Ms. Geddes, in terms of volume? A banker's box? Two banker's
15 boxes?

16 MS. GEDDES: They were electronic, so I don't know how
17 many banker's boxes. Believe it was, in terms of Bates
18 numbers, up to the 10,000 range, if I'm remembering correctly.
19 There were a lot of line sheets to produce. That's the primary
20 source of the pages.

21 THE COURT: And what does the time frame involve?

22 MS. GEDDES: The conspiracy is charged back to 2015.
23 The wires themselves began last summer and would cover
24 approximately four or five months.

25 THE COURT: All right.

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1 Ms. Shroff and the others, how much time do you want
2 to review the material, approximately 10,000 documents?

3 MS. SHROFF: Your Honor, we would ask for 60 days.

4 (Pause)

5 MS. SHROFF: I guess 90 days is the request.

6 THE COURT: No, I won't do 90 days. I'll do 60 days.
7 And we'll just -- I like to have a control date in there. I'm
8 not -- you don't have to complete all your work within 60 days.
9 I want to have a control.

10 And so let's see. Today is January 23rd. The last
11 week in March, David.

12 THE CLERK: March 28th at 11 a.m.

13 THE COURT: March 28th at 11 a.m. That will be for
14 control purposes. We'll review the status then and see how
15 much more time they need, see what else is going on in the case
16 then.

17 That takes care of what I want to do today.

18 Ms. Shroff, does anybody want to take an appeal from
19 Judge --

20 MS. SHROFF: We do, your Honor.

21 THE COURT: You want to do that today?

22 MS. SHROFF: Yes, please. I'm ready to do it now.

23 THE COURT: OK.

24 Any other business to transact?

25 MR. DUBIN: Yes, Judge. Mr. Bogdanovic has a broken

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1 jaw. He was arrested, brought into the district four days ago.
2 I placed that fact on the record before Magistrate Pitman. He
3 has trouble speaking, of course, with his jaw wired closed. He
4 cannot consume solid food. I've spoken to the government about
5 it. And even though he's seen a doctor at the MCC, no action
6 has been taken. So I would ask your Honor to -- I believe your
7 Honor could enter an order directing the medical staff at the
8 MCC to have him taken to, I'm assuming it would be Downtown
9 Beekman, so that he can have the operation necessary to take
10 the wiring out of his jaw.

11 THE COURT: Ms. Geddes, rather than making an order,
12 I'll ask Ms. Geddes on behalf of the government to inquire of
13 the Bureau of Prisons about the status of Mr. Bogdanovic's jaw
14 and what steps have to be taken to make sure that he gets the
15 proper treatment.

16 MS. GEDDES: Yes, your Honor. We've actually e-mailed
17 with the counsel at MCC this morning, just after speaking with
18 his counsel, and they are reaching out to the prison medical
19 staff to find out what's going on and fix the situation.

20 THE COURT: OK. And when do you anticipate getting a
21 definite answer? Ms. Geddes?

22 MS. GEDDES: The counsel at MCC didn't say when he
23 would have an answer. We anticipate in a day or two, and will
24 follow up by phone later on to confirm.

25 THE COURT: Would you submit a written report by, make

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1 it the 30th of January. It's a week from today.

2 MS. GEDDES: Yes, your Honor.

3 THE COURT: And, Mr. Dubin, if you're not satisfied
4 then, I'll consider entering an order at that time.

5 MR. DUBIN: All right. Thank you, Judge.

6 THE COURT: Ms. Todd, I saw that Mr. Francese --

7 MS. TODD: Has arrived. Yes, your Honor.

8 THE COURT: We'll arraign Mr. Francese.

9 MS. TODD: Yes, your Honor. He's reviewed the
10 indictment. We waive its public reading. And he enters a plea
11 of not guilty.

12 THE COURT: A plea of not guilty will be entered for
13 Mr. Francese.

14 What happened to you, Mr. Francese?

15 DEFENDANT FRANCese: Your Honor, I thought the R train
16 was running. I usually go through to Staten Island. I take
17 the train to the R train. The R train wasn't running, so I
18 took the ferry. And I didn't know how far it was. I ran all
19 the way from the ferry here. Started out at 8 o'clock.

20 THE COURT: Now you know where we are.

21 DEFENDANT FRANCese: Yes, sir.

22 THE COURT: You'll be on time.

23 DEFENDANT FRANCese: Yes, sir. I'm so sorry.

24 THE COURT: All right. Anybody else want to
25 participate in the bail hearing?

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1 MS. GEDDES: Your Honor, before you proceed to that,
2 so that we don't forget at the end, the government would move
3 to exclude time through March 28 so that the defendants can
4 begin to review discovery, consider any motions that they may
5 want to make, and have potential pretrial disposition
6 discussions with the government.

7 THE COURT: Any objection?

8 MR. DE CASTRO: No objection.

9 MR. WOMBLE: No objection.

10 MS. SHROFF: No, your Honor.

11 THE COURT: For the reasons stated, the time between
12 now and January -- excuse me -- March, what's the date?

13 THE CLERK: 28th.

14 THE COURT: -- March 28 will be excluded. It's in the
15 interests of justice to do so. Those interests outweigh the
16 interests of the public and the defendant in a Speedy Trial.

17 Now, you're free to stay for the bail hearing. Those
18 of you who want to go can leave.

19 Mr. Kosic, you'll want to stay.

20 Marshals, thank you.

21 A MARSHAL: You're welcome, your Honor.

22 (Pause)

23 THE COURT: All right, Ms. Shroff.

24 MS. SHROFF: Thank you, your Honor.

25 Your Honor, as the Court is aware, we were before

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1 Magistrate Judge Pitman, and Magistrate Judge Pitman, at the
2 end of a rather long bail hearing, stated to the Court and to
3 us that essentially the facts as he knew them and as he had
4 heard them were in equipoise and it was the presumption of
5 detention that led him to detain Mr. Kosic.

6 I ask the Court to consider that perhaps Judge Pitman,
7 who is normally right, did not come out the proper way in this
8 case and reverse the ruling below and order Mr. Kosic released
9 on the conditions proposed by Pretrial Services.

10 I note first and most importantly, your Honor, that I
11 will not be repeating the facts below, and I hope the
12 government adheres to the same.

13 The issue before the Court right now, with the facts
14 in the way that they are presented to you, is whether or not
15 bail is proper here. It is a de novo review, and you need not
16 find that Judge Pitman was in error or his ruling was in error.
17 The ruling is de novo here.

18 So the most important facts here, your Honor, and,
19 again, I said this below and I just say it very briefly,
20 Pretrial Services, who has been doing this far longer than
21 Ms. Geddes, Ms. Lake, or I, as long as the Court has been doing
22 it, recommends release. The recommendation still stands.
23 After a very protracted bail hearing, Ms. Blackford has not
24 changed her recommendation in any way. The reason there is no
25 change in the recommendation is because the Bail Reform Act is

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1 clear. The Bail Reform Act asks that bail be set to assume
2 that there's always a risk -- there is always a risk of
3 dangerousness and there is always a risk of flight. The
4 question is whether or not there is no risk. The question is
5 whether there are reasonable measures that can be put into
6 place to reasonably assure that Mr. Kosic will return to the
7 Court.

8 And, look, if I concede every single fact that the
9 government wants to offer, every single fact about the strength
10 of their case, every single fact about their line sheets, which
11 they refuse to turn over, every single fact about all of what
12 they know about this investigation, the fact that they left
13 Mr. Kosic out for more than a year -- they left him out. They
14 decided the timing of the takedown. They decided when to
15 arrest him. They decided where to watch him. And they decided
16 that this was the time to arrest him. That is on them. But
17 they cannot then now argue that, because of whatever reason
18 that led them to leave him out for so long, he is now suddenly
19 a graver danger to society or he is a risk of flight.

20 Mr. Kosic has family present here in court today which
21 was not present at the initial bail hearing. I do not think
22 that changes the analysis. The three gentlemen in the back
23 row -- the gentleman raising his hand is his father. Next to
24 him is his uncle. And next to him is a family friend. They
25 are here to tell the Court that they assume the risk, the risk

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1 of watching over Mr. Kosic, the risk of making sure that
2 electronic monitoring, home detention, home incarceration is in
3 place, that Mr. Kosic may not leave his home without
4 permission, that nobody can enter their home without their
5 consent or their permission. And therefore, the conditions
6 recommended by Pretrial Services are sufficient to ensure that
7 there is no risk of danger and there is no risk of flight.

8 And I just want to add one last fact on the risk of
9 danger. The government, as Judge Pitman has noted repeatedly
10 in the bail below, has been investigating, as they say, this
11 case for more than a year. I hardly think that there is a
12 single stash house out there that they can now say they don't
13 know about, a single co-defendant that they don't know about,
14 or anything about Mr. Kosic that they don't know about. For
15 God's sakes, they watched him for more than a year. They
16 watched him for a year, according to them. And the state
17 institution watched him before. And they have all the
18 information from state court. So what is it that they now no
19 longer know about Mr. Kosic?

20 If the government is to be believed, everyone -- and
21 let's just assume for a moment here that everything they say is
22 true, that their evidence is for sure going to give them a
23 guilty verdict right out of the box, the jury is not even going
24 to leave the box before they convict him. Let's assume all of
25 that to be true so I do not have to hear from Ms. Geddes again

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1 about the strength of her case. I assume it's all true. The
2 Bail Reform Act doesn't say that bail is only for the innocent.
3 The Bail Reform Act says "reasonably assure reasonable
4 conditions for release."

5 So what do you have on the column that allows for
6 release? You have a family that has lived in Staten Island
7 their entire lives. You have three people who are here of
8 elderly age who are willing to look over Mr. Kosic. You have
9 Mr. Kosic, who has a heart condition. And the government was
10 in fact incorrect before when they say he has no history of
11 use. He in fact did have a prior history of use that he has
12 been attending to. You have an American citizen. You have a
13 home. And you have pretrial, saying that there are conditions
14 that could be set. So I ask the Court to set those conditions,
15 allow Mr. Kosic to be on home incarceration, whatever the
16 conditions the Court wants to impose is fine with us, and of
17 course that he will be detained until release and until we can
18 get those conditions met.

19 Thank you, your Honor.

20 THE COURT: Ms. Geddes.

21 MS. GEDDES: Thank you, your Honor. As your Honor
22 knows, this case is a presumption case where there is a
23 presumption that no set of conditions will ensure the safety of
24 the community or the defendant's appearance in court. The
25 government believes here that that presumption cannot be

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1 overcome. This defendant is the leader of all the defendants
2 who were arrested, and he is responsible for distributing
3 nearly a kilogram per month of heroin that was laced with
4 fentanyl. All of that came through Kosic to the other
5 defendants and then to individuals on the streets.

6 Conservatively, we estimate that he was selling heroin
7 to his co-defendants for approximately \$120,000 per month.
8 That's based on the amounts and the prices that were
9 intercepted during the investigation. And that's also based on
10 a conservative estimate of 3,000 bundles of heroin per month.
11 3,000 bundles of heroin is 30,000 doses that are flooding the
12 streets every month. And for these charges he's facing a
13 ten-year mandatory minimum sentence.

14 Mr. Kosic was not a hands-off participant. He sold on
15 a daily basis. And he knew how to insulate himself. He didn't
16 keep the narcotics in his house. His house was not the stash
17 house. But he controlled the other stash houses. One was in
18 an apartment in Brooklyn until he started renovating it. And
19 then he gave a discount for narcotics to a co-defendant for
20 keeping the drugs at that co-defendant's house.

21 The government is aware of at least four deaths tied
22 to drugs supplied by Kosic to his co-defendants and then to the
23 victims. And, as the government said for the hearing with
24 Judge Pitman, Mr. Kosic did not have to know about those deaths
25 to be responsible. If the government can prove that those

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1 drugs killed those victims and if the drugs came from him, he
2 is facing a 20-year sentence for any of those four deaths.

3 But the fact is, he did know that his narcotics that
4 he was selling, the heroin, the fentanyl, were causing people
5 to overdose. His own co-defendant, who was just sitting here a
6 few minutes before you, overdosed on narcotics supplied by
7 Kosic. He survived. Mr. Kosic knew about this overdose, and
8 he continued to sell heroin after it.

9 And while some of the individuals before you were
10 users of heroin, Mr. Kosic was not. The government isn't
11 saying he didn't use any narcotics. But he was not an addict
12 in the same way that some others were. He wasn't doing this to
13 feed an addiction to heroin. He was doing it for profit.

14 As the Pretrial Services report points out, he has had
15 no legitimate employment. He's been unemployed for seven
16 years. His employment has been selling drugs.

17 Home confinement or any sort of release would allow
18 him to keep selling, and he would remain a danger to the
19 community. On the day of the arrests, there were ten bundles
20 of heroin -- that's 100 glassines -- in the toilet at his
21 house, where he and a co-defendant had been arrested.

22 The supplier who supplied Mr. Kosic with these large
23 quantities of heroin is still at large. Some of the people
24 that Mr. Kosic sold to are still at large, and some of them are
25 not yet identified. They were intercepted on the wires. We

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1 know that he was selling to them. But the people behind the
2 phone numbers have not yet been identified.

3 And unlike street-level dealers, who were the ones who
4 have the long rap sheets and get arrested and have the criminal
5 histories, Kosic kept himself removed, and he doesn't need to
6 be on the street to continue selling narcotics. He can do it
7 through a phone. And in fact, there were times intercepted on
8 the wire where, just from his phone, he coordinated sales. He
9 put co-defendants in touch. He told them when and where to
10 meet, went back and forth, telling them the price, telling them
11 where to meet each other.

12 The weight of the evidence here, as Ms. Shroff
13 mentioned, is strong. There are months of wiretaps. There is
14 seized heroin, which tested positive for fentanyl as well.
15 There are statements from co-conspirators describing
16 Mr. Kosic's role here as a supplier to everyone else. And as I
17 noted earlier, the sales would be approximately \$120,000 a
18 month to his co-defendants. There was very little money
19 recovered from the defendant. We believe that he has cash
20 somewhere. We don't know where. He didn't talk about where he
21 hides money on the wire. But we believe he has resources
22 hidden. He has ties to a foreign country. He is a U.S.
23 citizen and has lived here, but he speaks Albanian. He could
24 go to another country.

25 THE COURT: He was born here, wasn't he?

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1 MS. GEDDES: He was born here, yes, your Honor. He
2 has family from another country, and there are communications
3 where he spoke a foreign language. So it would not be a jump
4 to think that, facing ten years or 20 years, he would decide to
5 flee to another country, particularly if he has hidden assets.

6 THE COURT: Judge Pitman made no finding about flight,
7 did he?

8 MS. SHROFF: He did, your Honor.

9 THE COURT: Ms. Shroff.

10 Did he make any findings about flight?

11 MS. GEDDES: I don't believe that he explicitly said
12 whether he was detaining based on flight or --

13 THE COURT: I thought it was limited to dangerousness.

14 MS. GEDDES: It may have been, your Honor.

15 The final point I will make is that, in response to
16 Ms. Shroff's point that the government must not think he's that
17 dangerous because we left him out for a year, I think it's
18 fairly common-sense that when the investigation began, we did
19 not have all the defendants identified yet. We learned of
20 their roles as the investigation went on and indicted everyone
21 once we felt that we had sufficient evidence to do so. So the
22 fact that he has been out for some portion of the government's
23 investigation is evidence of nothing here. The government does
24 believe that he's a danger. We believe that there are deaths
25 that are tied to him. And we believe that he is a risk of

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1 flight and, most importantly, a danger to the community if he
2 is released.

3 THE COURT: Ms. Blackford?

4 MS. SHROFF: Ms. Blackford isn't here, your Honor.

5 MS. HARMON: Your Honor, Lea Harmon from Pretrial
6 Services.

7 THE COURT: Yes.

8 MS. HARMON: I don't have anything to add, your Honor.

9 THE COURT: OK. Ms. Shroff.

10 MS. SHROFF: Your Honor, may I just briefly respond?

11 THE COURT: Yes.

12 MS. SHROFF: Thank you. I have to say, I am really
13 surprised by this argument that because he supposedly speaks a
14 foreign language, somehow he's a greater danger of flight. I
15 speak five languages. I don't think I'm in danger of any risk
16 of flight ever. But I don't think that's a good argument to
17 make. It sort of puts immigrants at greater risk of detention
18 than American citizens who are born as Americans rather than
19 naturalized.

20 And it's even worse to make that kind of an argument
21 when Mr. Kosic is an American that was born here and happens to
22 speak a foreign language. He has absolutely no family in
23 Albania that would be of relevance here. His immediate family
24 is seated in the court and lives here.

25 I'm not going to further address that kind of an

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1 argument here. And I hope the Court does not give it any
2 countenance.

3 I do want to emphasize that Judge Pitman, in light of
4 all of the same arguments -- and now they have changed the drug
5 amount to what they found at the house and conceded it is in
6 fact glassine. I want to just direct the Court that, at page
7 58 of the transcript below, right, Judge Pitman specifically
8 noted that the kind of evidence that you would normally see
9 when labeling someone a leader -- and they keep doing this,
10 with absolutely no proof that he is the leader. And as I tried
11 to explain to Judge Pitman, and I could do so here again, they
12 literally have no proof. In fact the proof is to the contrary.
13 They keep talking about the overdose of Shaun Sullivan. And
14 Shaun Sullivan has use. Shaun Sullivan has criminal history
15 that is so old that my client was not even born at the time
16 that Mr. Sullivan started using and selling.

17 To attribute to Mr. Kosic the actions of a man who is
18 old enough to be his father and has an addiction history and a
19 sale history that predates his birth is ridiculous. Mr. Kosic
20 is not responsible for the actions of another. And I am sure
21 that, had Mr. Sullivan's lawyer stood up here and said, my
22 client did this because of addiction, the government would say,
23 well, that's really just too bad, it's still a crime to be an
24 addict and use.

25 So for them in this bail application to somehow try

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1 and communicate to the Court that bail is different for an
2 addict versus somebody who's doing it for money -- and frankly
3 they don't even have proof of that -- is simply not proper.

4 Let me address two other arguments that they've made.
5 They argue that somehow Mr. Kosic is completely capable of
6 still selling drugs, by use of a phone. Fine. No problem. We
7 will agree to a condition that Mr. Kosic not use the phone. We
8 will agree to a condition that there be only a landline in the
9 home and that the landline be monitored and that the landline
10 be used by his father to inform us. And we can even arrange,
11 if the Court wants, for attorney visits that are preset so he
12 doesn't have to even use the phone to contact us. If that's
13 really the government's argument, that he can use the phone to
14 sell drugs, we are happy to have the Court consider a condition
15 that would eliminate such a risk.

16 I don't think that's how the criminal history of the
17 other defendants is explained. And I do not think that the
18 government has properly overcome even the basic "clear and
19 convincing evidence" threshold to show that he is a leader.

20 Again, there is no indication that Mr. Kosic was the
21 only person that the other co-defendants bought from. In fact,
22 they know that that's not true. They know that the other
23 co-defendants that they have arrested sold other drugs and they
24 bought other drugs, including heroin, from other suppliers. So
25 to say that Mr. Kosic is somehow the ringleader or somehow had

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1 anything to do with what the others arrested here did is simply
2 not true.

3 Finally, your Honor, they keep talking about how these
4 deaths are somehow related to Mr. Kosic. Their charging
5 instrument belies that claim, number one. But, number two, the
6 government just told you that they could only do their takedown
7 after they developed evidence. That's not the only criteria
8 for the government to develop the timing of their takedown.
9 The government may decide, in their own wisdom, that, look, a
10 person is just so dangerous, we do not need to wait until we
11 have 11 other people to arrest. They could have arrested
12 Mr. Kosic at any time. In fact, they chose when to arrest him.
13 They chose to have their investigation be wider. They chose
14 when they made this arrest. They didn't even arrest Mr. Kosic
15 separately and charge him separately. Why? Because they
16 wanted a bigger investigation. And they only put their bigger
17 investigation as a priority when there is not a danger that
18 they are uncomfortable living with. The fact that they left
19 him out for a year shows that the government itself is
20 comfortable having Mr. Kosic out. That's why they left him
21 out.

22 I do believe I've overcome the presumption and I ask
23 you to set bail. Thank you, your Honor.

24 THE COURT: Ms. Geddes, why are the conditions which
25 Mr. Kosic suggests not adequate to guarantee that there won't

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1 be any danger in his release?

2 MS. GEDDES: Your Honor, the suggestion that he could
3 be ordered not to have phones, I'm not sure how they would be
4 enforceable. He has had multiple phones throughout this
5 investigation, burner phones, personal phones. I think it
6 would be difficult for Pretrial Services to ensure that he has
7 no cellphone hidden somewhere that he is using to conduct
8 business. And there is just no way of knowing if he is
9 complying with that condition.10 THE COURT: That's one. Anything else you want to say
11 about the conditions that Ms. Shroff said she'd agreed to on
12 behalf of her client?13 MS. GEDDES: Well, the conditions that Pretrial
14 Services had suggested, such as home incarceration, for the
15 same reason, the government doesn't believe that that would
16 stop him from continuing to be a threat to the community. He
17 lived in this house before, and he committed these crimes,
18 including through the phone, as the government explained
19 before. So keeping him in that house would not solve the
20 problem.

21 THE COURT: All right.

22 MS. SHROFF: Your Honor, look, pretrial does visits.
23 They do surprise visits. And if Mr. Kosic were to even violate
24 a single condition of the bail, this Court has the power to
25 remand him.

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1 THE COURT: Thank you. I'll take a short recess.

2 MS. SHROFF: Thank you, your Honor.

3 (Recess)

4 THE COURT: I thank the parties for their argument.

5 I have read the transcript of the proceedings before
6 Magistrate Judge Pitman last week on January 18th. I've heard
7 Ms. Shroff and Ms. Geddes take their arguments today. I've
8 read the Pretrial Services report involving Mr. Kosic.9 After appropriate consideration, I agree with
10 Magistrate Judge Pitman. This is a presumption case. And I
11 share his conclusion that the defendant has not rebutted the
12 presumption.13 I'm going to continue the detention order, primarily
14 as Magistrate Judge Pitman found, on the risk of dangerousness.
15 Mr. Kosic will be detained pending trial. The drugs involved
16 in this case, the mixture of heroin and fentanyl, are extremely
17 dangerous. Its distribution presents a grave danger to the
18 community. So I'm going to direct that the detention of
19 Mr. Kosic be continued.

20 That's my findings and conclusions of law.

21 Thank you.

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